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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/728,103	12/04/2003	Peter A. Iles	BPINC.001A	7273
20995	7590	11/01/2004	EXAMINER	
KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614			TRAN, BINH X	
			ART UNIT	PAPER NUMBER
			1765	

DATE MAILED: 11/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/728,103

Applicant(s)

ILES ET AL.

Examiner

Binh X Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 July 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-22, 43 and 44 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 43 and 44 is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 December 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 7/9/2004; 7/26/2004.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election of Group I (claims 1-22, 43-44) in the reply filed on 7-26-2004 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).
2. The non-elected claims 23-42, 45-46 were cancelled by the preliminary amendment filed on 7-26-2004.

### ***Drawings***

3. The drawings are objected to because the drawing contains many hand-written reference numbers and phrases. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to

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obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

4. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

### ***Claim Objections***

5. Claim 1 is objected to because of the following informalities: In line 8 of claim 1, "has a first, upper band gap" appears to have an extra comma between the term "first" and "upper". The examiner suggests deleting the comma (i.e. ", "). Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

6. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

7. Claims 14-15, 22 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

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In claim 14, the examiner does not understand the limitation "forming grading layers [plurality of layer] between said lower subcell and said middle subcell by growing InGaAs semiconductor material... lattice spacing" (emphasis added). It is impossible to grow a plurality of grading layer by using a single growing process with InGaAs semiconductor material.

In claim 15, the examiner does not understand the limitation "forming grading layers [plurality of layer] between said lower subcell and said middle subcell by growing  $\text{In}_y\text{Ga}_{1-y}\text{As}$ ... lattice spacing" (emphasis added). It is impossible to grow a plurality of grading layer by using a single growing process with  $\text{In}_y\text{Ga}_{1-y}\text{As}$  material.

In claim 22, the examiner does not understand the limitation "forming grading layers [plurality of layer] between said first and second lower subcell by growing InGaAs semiconductor material... lattice spacing" (emphasis added). It is impossible to grow a plurality of grading layer by using a single growing process with InGaAs semiconductor material.

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claims 1-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In lines 15-16 of claim 1, the phrase "said growth substrate" lacks antecedent basis. The examiner suggests replacing "said growth substrate" with --said growth semiconductor substrate--.

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In claims 2-5, the phrase "said growth substrate" lacks antecedent basis. Again, the examiner suggests replacing "said growth substrate" with --said growth semiconductor substrate--.

In lines 2-3 of claim 7 and line 1 of claim 8, the phrase "thin sheet" (emphasis added) is subjective and indefinite.

In line 2 of claim 8, the phrase "high reflectance" (emphasis added) is subjective and indefinite.

In claims 10-13, 15, " $\text{Ga}_x\text{In}_{1-x}\text{P}$ ", " $\text{In}_y\text{Ga}_{1-y}\text{As}$ ", or " $\text{Si}_{(x)}\text{Ge}_{(1-x)}$ " are indefinite because applicants fail to define the value of "x" and/or "y".

In line 2 of claim 16, the phrase "said top subcell" lacks antecedent basis.

Claims 2-22 are rejected under 35 U.S.C. 112, second paragraph, because they directly or indirectly depend on indefinite claim 1.

### ***Allowable Subject Matter***

10. Claim 1 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

11. Claims 2-13, 16-21 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

12. Claims 43-44 are allowed.

13. The following is a statement of reasons for the indication of allowable subject matter: The cited prior arts fail to disclose the step of providing a support structure over the lower subcell having a lower band gap and removing the growth semiconductor

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substrate in conjunction with all other limitations in the claim. The closest prior art (King et al. US 6,340,788) teaches to retain growth semiconductor substrate because it does not have the support structure form over the lower subcell.

***Conclusion***

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Binh X Tran whose telephone number is (571) 272-1469. The examiner can normally be reached on Monday-Thursday and every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nadine G. Norton can be reached on (571) 272-1465. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Binh X. Tran

**NADINE G. NORTON**  
**SUPERVISORY PATENT EXAMINER**

